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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,426	02/18/2004	David J. Jorgenson	P0008050.05	3045
27581 MEDTRONIC,	7590 05/26/200 INC.		EXAMINER	
710 MEDTRON	NIC PARKWAY NE		HOLMES, REX R	
MINNEAPOLIS, MN 55432-9924			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			05/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/781,426	JORGENSON ET AL.
Office Action Summary	Examiner	Art Unit
	REX HOLMES	3762
The MAILING DATE of this communication a Period for Reply	ppears on the cover sheet with t	he correspondence address
A SHORTENED STATUTORY PERIOD FOR REP WHICHEVER IS LONGER, FROM THE MAILING - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory perior. - Failure to reply within the set or extended period for reply will, by statue Any reply received by the Office later than three months after the main earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUNICAT 1.136(a). In no event, however, may a reply of will apply and will expire SIX (6) MONTHS ate, cause the application to become ABAND	TION. De timely filed from the mailing date of this communication. ONED (35 U.S.C. § 133).
Status		
1) Responsive to communication(s) filed on 11 2a) This action is FINAL . 2b) Th 3) Since this application is in condition for allow closed in accordance with the practice under	nis action is non-final. vance except for formal matters,	
Disposition of Claims		
4) Claim(s) 18-25 is/are pending in the applicat 4a) Of the above claim(s) is/are withdr 5) Claim(s) is/are allowed. 6) Claim(s) 18-25 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and Application Papers 9) The specification is objected to by the Examin	rawn from consideration. /or election requirement.	
10) The drawing(s) filed on is/are: a) according to a polician and a polici	ccepted or b) objected to by the drawing(s) be held in abeyance. Section is required if the drawing(s) is	See 37 CFR 1.85(a). s objected to. See 37 CFR 1.121(d).
Priority under 35 U.S.C. § 119		
12) ☐ Acknowledgment is made of a claim for foreign a) ☐ All b) ☐ Some * c) ☐ None of: 1. ☐ Certified copies of the priority docume 2. ☐ Certified copies of the priority docume 3. ☐ Copies of the certified copies of the prapplication from the International Bure * See the attached detailed Office action for a list	nts have been received. nts have been received in Appli iority documents have been rec eau (PCT Rule 17.2(a)).	cation No eived in this National Stage
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Sumr Paper No(s)/Ma 5) Notice of Inform 6) Other:	

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- Claims 22-24, drawn to a method distinguishing the potential presence of a lead related condition, classified in class 607, subclass 28.
- II. Claims 25 and 18-21, drawn to a method of lead status monitoring, classified in class 607, subclass 27.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the sensing of two non-physiological sensed events and the creation of two different non-physiological sensed event counters. The subcombination has separate utility such as being used to determine the potential presence of a lead related condition without using a

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims

complex mathematical algorithm.

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thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

- 3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above <u>and</u> there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:
 - (a) the inventions have acquired a separate status in the art in view of their different classification;
 - (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
 - (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
 - (d) the prior art applicable to one invention would not likely be applicable to another invention;
 - (e) the inventions are likely to raise different non-prior art issues under 35U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. A telephone call was made to Jason Kelly on 5/22/09 to request an oral election to the above restriction requirement, but did not result in an election being made.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REX HOLMES whose telephone number is (571)272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./ Examiner, Art Unit 3762 /George R Evanisko/ Primary Examiner, Art Unit 3762